



State of Utah

Department of Natural Resources

MICHAEL R. STYLER
Executive Director

Division of Oil, Gas & Mining

JOHN R. BAZA
Division Director

JON M. HUNTSMAN, JR.
Governor

GARY R. HERBERT
Lieutenant Governor

August 11, 2006

CERTIFIED RETURN RECEIPT 7004 2510 0004 1824 7883

Tracy Burnham
Decorative Landscaping
3231 North Millcreek Rd.
Pleasant Grove, Utah 84062

Subject: Reassessment for Cessation Order MC-2006-03-03, Decorative
Landscaping, T & M Holdings, M0350023, Salt Lake County, Utah

Dear Mr. Burnham:

The proposed civil penalty assessment for the above referenced cessation order was sent to you on June 2, 2006. At that time the abatement had not been completed and some of the facts surrounding the violation were not available. In accordance with rule R647-7-105, the penalty is to be reassessed when it is necessary to consider facts, which were not reasonably available on the date of the issuance of the proposed assessment. Now that the Cessation Order has been terminated the assessment can be completed. Following is the reassessment of the penalty for the cessation order:

- MC-06-03-03 Violation 1 of 1 \$1760

The enclosed worksheet specifically outlines how the violation was assessed. You should note that good faith points have now been awarded.

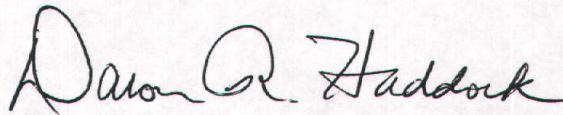
Under R647-7-106, there are two informal appeal options available to you:

1. If you wish to informally appeal the fact of the Cessation Order, you should file a written request for an Informal Conference within thirty (30) days of receipt of this letter. This conference will be conducted by the Division Director or Associate Director. This Informal Conference is distinct from the Assessment Conference regarding the proposed penalty.

2. If you wish to review the proposed penalty assessment, you should file a written request for an Assessment Conference within thirty (30) days of receipt of this letter. If you are also requesting a review of the fact of violation, as noted in paragraph one, the assessment conference will be scheduled immediately following that review.

If a timely request for review is not made, the fact of the cessation order will stand, the proposed penalty(ies) will become final, and the penalty(ies) will be due and payable within thirty (30) days of the reassessment. Please remit payment to the Division, mail c/o Vickie Southwick.

Sincerely,



Daron R. Haddock
Assessment Officer

DRH:vs

Enclosure: worksheet

cc: Vicki Bailey, Accounting
Vickie Southwick, Exec. Sec.

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<u>PROBABILITY</u>	<u>RANGE</u>
None	0
Unlikely	1-9
Likely	10-19
Occurred	20

ASSIGN PROBABILITY OF OCCURRENCE POINTS 20

PROVIDE AN EXPLANATION OF POINTS:

*** *An Operator is required to obtain a permit from the Division of Oil Gas and Mining prior to conducting mining operations. While the Operator has a small mine permit, he has expanded the area of disturbance to beyond the 5 acres that are allowed under that permit. Some acres have been disturbed at this location without having obtained approval to do so. Disturbance has actually occurred, thus assignment of 20 points.*

3. What is the extent of actual or potential damage? RANGE 0-25

In assigning points, consider the duration and extent of said damage or impact, in terms of area and impact on the public or environment.

ASSIGN DAMAGE POINTS 4

PROVIDE AN EXPLANATION OF POINTS:

*** *The inspector stated that the operator had disturbed about 2-2.5 acres of land that was outside of the approved permit area. Damage would be the loss of resources such as permanent vegetation and soil from the area disturbed. There is potential for sediment to leave the site, but no evidence of impacts off the site was observed nor was there any injury to the public. The damage is probably temporary and the site should be readily reclaimable. The soil resources have not been lost but have been replaced on the surface as excavation proceeded. Most vegetation has been removed from the mining area, but the site matches surrounding topography and will require little/ no grading. Damage is considered minimal and points are assigned in the lower part of the range.*

B. ADMINISTRATIVE VIOLATIONS (Max 25pts)

1. Is this a POTENTIAL or ACTUAL hindrance to enforcement?
RANGE 0-25

Assign points based on the extent to which enforcement is actually or potentially hindered by the violation.

ASSIGN HINDRANCE POINTS N/A

PROVIDE AN EXPLANATION OF POINTS:

TOTAL SERIOUSNESS POINTS (A or B) 24

III. DEGREE OF FAULT (Max 30 pts.) (R647-7-103.2.13)

- A. Was this an inadvertent violation which was unavoidable by the exercise of reasonable care? IF SO--NO NEGLIGENCE; or, was this a failure of a permittee to prevent the occurrence of a violation due to indifference lack of diligence, or lack of reasonable care, the failure to abate any violation due to the same or was economic gain realized by the permittee? IF SO--GREATER DEGREE OF FAULT THAN NEGLIGENCE.

No Negligence	0
Negligence	1-15
Greater Degree of Fault	16-30

STATE DEGREE OF NEGLIGENCE Negligence

ASSIGN NEGLIGENCE POINTS 8

PROVIDE AN EXPLANATION OF POINTS:

*** *The Operator was cited for a similar violation in March of 2005. At that time the operator was not aware of the need for a permit from DOGM for this operation. They did secure a permit and were operating in the boundary of a small mine 5 acre area. They should have known that they needed to stay within the small mine boundary, but for some reason they chose to mine outside of the boundary. This indicates indifference to the rules or lack of reasonable care. A prudent operator would understand the need to stay within the boundary of a permit. The Operator is considered negligent because they were not careful to stay within the permit boundary and they mined more acreage than what was allowed under their current NOI. Points are assigned in the middle of the negligence range.*

IV. GOOD FAITH (Max 20 pts.) (R467-7-103.2.14)

(Either A or B) (Does not apply to violations requiring no abatement measures)

- A. Did the operator have onsite, the resources necessary to achieve compliance of the violated standard within the permit area?
IF SO--EASY ABATEMENT

Easy Abatement Situation

- Immediate Compliance -11 to -20*
(Immediately following the issuance of the NOV)
- Rapid Compliance -1 to -10
(Permittee used diligence to abate the violation)
- Normal Compliance 0
(Operator complied within the abatement period required)

(Operator complied with condition and/or terms of approved Mining and Reclamation Plan)

*Assign in upper or lower half of range depending on abatement occurring the 1st or 2nd half of abatement period.

- B. Did the permittee not have the resources at hand to achieve compliance, or does the situation require the submission of plans prior to physical activity to achieve compliance?

IF SO--DIFFICULT ABATEMENT

Difficult Abatement Situation

- Rapid Compliance -11 to -20*
(Permittee used diligence to abate the violation)
- Normal Compliance -1 to -10*
(Operator complied within the abatement period required)
- Extended Compliance 0
(Permittee took minimal actions for abatement to stay within the limits of the NOV or the violated standard of the plan submitted for abatement was incomplete)

(Permittee complied with conditions and/or terms of approved Mining and Reclamation Plan)

EASY OR DIFFICULT ABATEMENT? Easy

ASSIGN GOOD FAITH POINTS -1

PROVIDE AN EXPLANATION OF POINTS:

*** *The Operator had the option of reclaiming the site or filing a Large Mine application and chose to reclaim the site. This was considered to be an easy abatement because the operator had the equipment on site to complete the reclamation. The abatement called for reclamation to be completed by May 22, 2006. This date was subsequently extended twice in order for the operator to complete the work. The last extension gave the Operator until July 3, 2006 to complete the work, which he did. The Operator did work with the Inspector to get the required extensions as needed although the abatement took longer than expected. I am awarding only 1 point of good faith because of the coordination on the extensions.*

V. ASSESSMENT SUMMARY (R647-7-103.3)

NOTICE OF VIOLATION #	<u>MC-06-03-03-01</u>
I. TOTAL HISTORY POINTS	<u>5</u>
II. TOTAL SERIOUSNESS POINTS	<u>24</u>
III. TOTAL NEGLIGENCE POINTS	<u>8</u>
IV. TOTAL GOOD FAITH POINTS	<u>-1</u>
TOTAL ASSESSED POINTS	<u>36</u>
TOTAL ASSESSED FINE	<u>\$ 1760</u>

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

TRACY BURNHAM
DECORATIVE LANDSCAPING
3231 NORTH MILLCREEK RD.
PLEASANT GROVE, UTAH 84062

2. Article Number
(Transfer from service label)

7004 2510 0004 1824 7883

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

AUG 14 2006

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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VICKIE SOUTHWICK
DIVISION OIL GAS AND MINING
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SALT LAKE CITY UTAH 84114

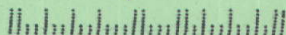
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AUG 15 2006

DIV. OF OIL, GAS & MINING

Letter Dated 8-11-06
T&M Holding

m0350023
mc-2006-63-03



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